(18,462.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 280.

THE PEOPLE'S NATIONAL BANK OF LYNCHBURG, APPELLANT,

vs.

MORTON MARYE, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF VIRGINIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, *Eastern District of Virginia,* } *ss:*

At a circuit court of the United States for the eastern district of Virginia, begun and held at the court-house in the city of Richmond, in said district, on the first Monday of October, being the seventh day of the same month, in the year of our Lord one thousand nine hundred and one.

Present, the Hon. Edmund Waddill, Jr., judge of the United States circuit court for the eastern district of Virginia.

Among other were the following proceedings, to wit:

THE PEOPLE'S NATIONAL BANK OF LYNCHburg, Virginia, Complainant,
vs.
MORTON MARYE, Auditor of Public Accounts, Defendant. } In Equity. No. 494.

2 *Bill of Complaint.*

Filed July 22d, 1896.

To the judges of the circuit court of the United States for the eastern district of Virginia:

The People's National Bank of Lynchburg, a citizen of the State of Virginia, and having its office in the city of Lynchburg, brings this its bill against Morton Marye, auditor of public accounts for the State of Virginia, a citizen of the city of Richmond, in the State of Virginia. And thereupon your complainant avers that the sum or value in controversy is more than $2000 exclusive of interest & costs, and says that it is a corporation formed under and by virtue of the national banking act of the United States and has a capital of $205,300, of which $28,990 is invested in real estate in the said city. Its said capital is in shares of $100 each, held in different amounts by a large number of shareholders, some residents and some non-residents of the State of Virginia.

Your complainant further shows to your honors that the legislature of the State of Virginia, by an act passed for the purpose of imposing taxes, and approved March 6th, 1890, (see Acts of Assembly of Virginia, 1890, page 205) undertook, among other things, to assess a tax upon the shareholders of your complainant, and for that purpose inserted the 17th section of the said act, which is in the words and figures following:

"No tax shall be assessed upon the capital of any bank or banking association organized under the authority of this State or of the United States; but the stockholders in such banks or banking associations shall be assessed and taxed on the market value of their

shares of stock therein at the same rate as is assessed upon other moneyed capital in the hands of individuals residing in this State. It shall be the duty of each commissioner of the revenue annually, during the month of May, to report to the auditor of public accounts, the name of each bank or banking association doing business in his district, and the names of the officers thereof, and to assess the share or shares of each stockholder in the banks or banking associations as aforesaid at the market value thereof as of the first day of February in each year; and it shall be the duty of each of such banks or banking associations forthwith to pay into the treasury of the State the tax imposed by law upon such assessment of the shares aforesaid on or before the first day of June. If such tax be not paid within thirty days after the assessment of said shares, the cashier of the bank or banking association failing to make payment, and his sureties, shall be liable for the same, and twenty per centum upon the amount to be recovered, on motion of the auditor of public accounts, in the circuit court of the city of Richmond, upon fifteen days' notice, according to the provisions of section seven hundred and thirteen of the Code of Virginia. The real estate of all banks and banking associations shall be assessed on the land books of the commissioners of the revenue with the same taxes with which other real estate is assessed.

3 As your honors will perceive by reading this section, its object was to assess a tax upon the market value of the shares of stock of your complainant and all other banks or banking associations in the State of Virginia, and also to provide a mode for the collection of such a tax thus assessed.

Your complainant further shows to your honors that the legislature of the State of Virginia, with the same object in view, and for the purpose of providing an additional mode of collecting said tax, passed the following act, approved March 3rd, 1896. (See Act- of Assembly of Virginia 1895–'6, page 700.)

"(1.) Be it enacted by the General Assembly of Virginia, That the holders of bank stock or the stock of any banking association doing business in this State, resident and non-resident, shall be assessed with the tax imposed thereon by law in the city, town or district wherein the bank or banking association is located, and said tax shall be first lien upon said stock, no matter in whose hands found, and have priority over any and all liens by deed of trust, mortgage, bill of sale, or any other assignment made by the owner, and take priority over all liens by execution, garnishment, or attachment process.

"(2.) It shall be the duty of the auditor of public accounts, as soon as practicable after the passage of this act, to furnish the cashier of the bank or banking associations doing business in this State with a list of its stockholders heretofore assessed with taxes upon their bank stock who have not paid said tax, which list shall give the name of the stockholder, amount of tax, when assessed, and the sum total due to the Commonwealth by each stockholder. The bank or banking association thus notified, should said bank or banking association so desire and elect, may pay to the auditor the tax

assessed upon the stock held by its stockholders, provided payment shall be made on or before the first day of July, eighteen hundred and ninety-six.

"(3.) But should the privilege conferred by the preceding section be declined or not availed of by the bank or banking association aforesaid, then it shall be the duty of the auditor without delay to notify the attorney general and give him a copy of the lists furnished the cashier of the bank or banking association aforesaid, and the attorney general by motion, shall proceed to collect said taxes from the individual stockholder. This motion shall be cognizable by and made in the circuit court of Richmond city after ten days' notice to the stockholder, and may be served upon non-resident defendants in the mode provided by section thirty-two hundred and eight of the Code of Virginia.

"(4.) This act shall be in force from its passage."

From these two acts your honors will perceive that the stockholders in your complainant and in all other banks and banking associations were assessed, by section 17, above recited, and taxed on the market value of their shares of stock, and that it is avowed in said section that such assessment should be "at the same rate as is assessed upon other moneyed capital in the hands of indi-
4 viduals residing in this State." And by the first section of the act approved March 3rd, 1896, above recited, it was provided that holders of bank stock or the stock of any banking association doing business in this State, resident and non-resident, shall be assessed with the tax imposed thereon by law, and it further provides that said tax shall be a first lien on the said stock, no matter in whose hands found, and shall have priority over any and all liens by deed of trust, mortgage, bill of sale, or other assessment made by the owner, and shall have priority over all liens of execution, garnishment, or attachment process.

Having thus provided for an assessment upon the market value of such shares of stock, and provided that such assessment should be at the same rate as is assessed upon other moneyed capital in the hands of individuals, the said acts proceed to declare how the said tax shall be collected; that is to say, how the tax, the rate of which is fixed in the said act approved March 6th, 1890, shall be collected after being so assessed. The provisions looking to the collection of this tax, as provided in these two acts, are peculiar and are as follows:

First. It is provided that it shall be the duty of each commissioner of the revenue annually, during the month of May, to report to the auditor of public accounts the name of each bank or banking association doing business in his district, and the names of the officers thereof.

Second. He shall assess the share or shares of each stockholder in the banks or banking associations aforesaid on the market value thereof, as of the 1st day of February in each year.

Third. That it shall be the duty of each of such banks or banking associations forthwith to pay into the treasury of the State the

tax imposed by law upon such association, on or before the 1st day of June.

Fourth. That if the tax be not paid within thirty days after the assessment of said shares, the cashier of the bank or banking association failing to make payment, and his sureties, shall be liable for the same and 20% of the amount, to be recovered on motion of the auditor of public accounts in the circuit court of the city of Richmond on fifteen days' notice.

Fifth. That it shall further be the duty of the auditor of public accounts, as soon as practicable after the passage of the act approved on March 3rd, 1896, to furnish the cashiers of the banks or banking associations doing business in this State with a list of its stockholders theretofore assessed with taxes upon their bank stock, who have not paid said tax, which list shall give the name of the stockholder, the amount of tax annually assessed and the sum total due to the Commonwealth by each stockholder.

Sixth. That the bank or banking associations thus notified, should said bank or banking association so desire and elect, may pay to the auditor the tax assessed upon the stock held by its stockholders, provided payment shall be made on or before the 1st day of July, 1896.

Seventh. That should the privilege conferred in the preceding section be declined, or not availed of by the bank or banking association aforesaid, then it shall be the duty of the auditor, without delay to notify the attorney general and give him a copy of the list furnished the cashier of the bank or banking association aforesaid, and the attorney general by motion shall proceed to collect said taxes from the individual stockholders. This motion shall be cognizable by and made in the circuit court of Richmond city after ten days' notice to the stockholders, and may be served upon non-resident defendants in the mode provided by section 3208 of the Code of Virginia.

Your complainant further shows to your honors that under the provisions of these laws, as set forth above, demand has been made upon it annually since 1891 by the auditor of public accounts for the payment of the tax- under such assessment so made, which it is claimed are due in different amounts from the several stockholders of your complainant, and this demand has been constantly refused,

6 because your complainant has been advised and now charges that the said laws are in contravention of the Constitution and laws of the United States and of the constitution of the State of Virginia, and that therefore, said assessment and tax are illegal and void and should not be demanded of your complainant or paid by it. They tend greatly and inequitably to multiplicity of suits.

Under the national banking act, as found in the Revised Statutes, it is provided by section 5219, as follows:

"Section 5219. Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by the authority of the State within which the association

is located, but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to two restrictions; that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county or municipal taxes, to the same extent, according to its value, as other real property is taxed."

Your complainant further shows to your honors in this connection and invites your honors' attention to the following acts of assembly of the State of Virginia, which are necessary to a true understanding of the question now raised and of the grounds upon which your complainant is advised and charges that the said assessment and tax is illegal and void.

Section 8 of the general tax law of Virginia, approved March 6th, 1890, under the head of Schedule C, reads as follows: (See p. 213, General Laws).

SCHEDULE C.

"8. The classification and numbers under Schedule C shall be as follows, to wit,

On personal property in choses in action, moneys, credits and capital.

First. The commissioners shall require each person residing in his district, city or town to exhibit and make oath to a statemen- in the aggregate of all bonds, notes and other evidences of debt, due and payable to such persons, in excess of one hundred dollars, the amounts of such bonds, notes and other evidences of debt, under one hundred dollars each, to be given in under oath, in the aggregate, the solvency of which, in cases of doubt, as well as in the value thereof, shall be determined by the said commissioner, which said list shall be signed by the commissioner and tax-payer, including bonds due from railroad and canal companies, bonds of counties, cities and towns, and bonds of other States and corporations; demands and claims, however, evidenced, owing or coming to such person, whether due or not, deducting from the aggregate amount thereof all such bonds, demands or claims not otherwise de-
7 ducted, owing to others from such person as principal debtor, and not as guarantor, endorser or surety." * * *

And clauses 3rd and 4th in the same section, read as follows:

"Third. He shall ascertain the value of all capital of incorporated joint stock companies not otherwise taxed, but real estate belonging to such company shall not be held to be capital, but shall be listed and taxed as property, and not as capital.

"Fourth. He shall ascertain from each person in his district, city or town the amount of capital invested, used, or employed in any trade or business not otherwise taxed. Moneys and credits actively used and employed in carrying on the trade or business, including

goods, wares and merchandise on hand and all solvent bonds, demands, wares and merchandise on hand, and all solvent bonds, demands or claims made or contracted in the course of business during the preceding year, shall be held to be capital in such trade or business, and shall not be taxed otherwise than as such capital; but real estate shall not be listed as such capital, but shall be assessed and taxed as other specific property; but nothing herein shall be held to exclude from taxation any property which is the subject of such business."

Having thus set forth to your honors in full the statutes of the United States and of the State of Virginia to which appeal must be made in settling the matters of which complaint is now made, your complainant further shows that the market value of the shares of stock held by its shareholders was fixed for the years 1891, 1892, 1893 and 1894 at $133 per share, and for the year 1895 at $140 per share.

During those years the assessed value of the real estate owned by your complainant and counted as a part of its capital, and estimated in fixing its market value was not deducted from the said assessment, although such real estate thus entering into the basis of assessment amounted to the sum of $28,990, and upon it the said tax was assessed and paid to the treasurer of the city of Lynchburg as other taxes were paid against other real estate in the said city.

Your complainant further shows that in making the said assessment upon the said stock, neither your complainant nor the owners respectively of the shares so assessed were permitted to deduct from the market value of said shares all bonds, demands or claims owing to others from such owner as principal debtor (and
8 not as guarantor endorser or surety) a privilege which is allowed to the owners of all other species of moneyed capital when assessed for taxes in the State of Virginia.

And your complainant avers and charges that a very large proportion of the owners of its stock owe bonds, demands and claims as principal debtor and not as guarantor, endorser or surety, and should be permitted to deduct the amount of said indebtedness from the assessed market value of such shares of stock.

Your complainant is now informed, believes and charges that the auditor of public accounts of Virginia is now demanding of your complainant the payment of the said several sums taxed against the said stock upon the assessment made as aforesaid, and is proceeding to take such steps as may be necessary for the purpose of collecting the same under the powers vested in him by the said acts.

Your complainant is advised that the act of assembly to which reference has been heretofore made and the said action on the part of the auditor in demanding the said payment from your complainant and from its several stockholders, is illegal and void, and is so illegal and void in the following particulars and for the following reasons:

First. Because under the said act of March 6th, 1890 no legal and proper assessment was really made against the stockholders in the said People's National Bank of Lynchburg.

That act provides, after laying down the general principles that stockholders in all banks should be assessed and taxed on the market value of their shares of stock, and that no tax should be levied upon the capital of any bank or banking association, that it shall be the duty of each commissioner of the revenue annually, during the month of May, to report to the auditor of public accounts of the State the name of each bank and banking association doing business in his district and the name of the officers thereof, and to assess the share or shares of each stockholder in such bank or banking association at the market value thereof as of the 1st day of February in each year.

9 The act makes no provision by which any notice of such assessment is to be given to the persons to be affected thereby, nor is any provision made or any machinery provided by which such person could learn that such assessment was to be or had been made. It merely provides that the commissioner of the revenue, *ex parte*, without notice to or knowledge of the parties against whom the tax was to be assessed, should make such assessment and report the same to the auditor of public accounts, and that thereupon the bank or banking association whose stockholders were so assessed, not the stockholders themselves, should forthwith pay into the treasury of the State the taxes imposed under such assessment. The stockholder is not heard, nor is opportunity afforded him to be heard as to the value of the stock, as to the question whether he owns it or not, or whether he owes any debts which should be deducted therefrom. He is not called upon to pay the tax and no provision is made by which he is authorized to pay it. He knows nothing of what the commissioner proposes to do or what he does, and another party, without his knowledge or consent, and without regard to whether he owes that party or not, is required to pay the taxes assessed against him into the treasury; a mode of assessment and a mode of collection novel in the history of taxation, unjust and liable to be so used as to work great hardship and wrong, both to the bank or banking association and to the owners of stock in such bank or banking association. In all other cases under the same general tax law therein holders of stock in other corporations are assessed with a tax thereon, or wherein the moneyed capital, either of corporations or individuals are assessed, the owners of such stock or moneyed capital are notified in some form of such assessment, either at the time it is made or by being called upon to personally pay the tax imposed; in all of which cases knowledge is given them of what is being done and opportunity to protect against, and if desired, to test the validity of such assessment and tax is duly afforded.

Second. Because section 17 of the act approved March 6th,

10 1890, assesses the tax on the market value of each share, without permitting any deduction upon such market value on account of any existing indebtedness of the said shareholder, while the same act provides that in assessing the market value of all bonds, notes and other evidences of debt, including bonds due from railroads and canal companies, bonds of counties, cities and towns, and

bonds of other States and corporations, demands and claims, however evidenced, owing to or coming to the person against whom such assessment is made, whether due or not, or whether from debtors residing in or out of the State, there shall be deducted from the aggregate amount thereof all such bonds, demands or claims not otherwise deducted, owing to others from such persons against whom such assessment is made as principal debtor, and not as guarantor, endorser or surety.

Thus your honors will perceive that the right to deduct the indebtedness of a person owning moneyed capital of a national banking institution, from the shares held by him therein, is denied by section 17 of the said act, while it is granted to a person holding bonds, stocks and other moneyed capital, as set forth above, thus distinctly violating the first condition laid down in section 5219 of the Revised Statutes, which declares that the tax against the shares of stock in national banks shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State. This, your complainant is advised and charged is a distinct discrimination on the part of the laws of the State of Virginia against the holders of the shares of its stock and all other holders of shares of national bank stock in the State of Virginia, and is thus distinctly in contravention of the Constitution of the United States and of section 5219 of the Revised Statutes, above set forth. Your complainants are advised that such being the case, the assessment on such shares of stock on this account and the law under which it is made is void and cannot be enforced.

11 Your complainant is not informed what are the several amounts of the indebtedness which each of its stockholders has a right to offset against the assessment made upon his shares in your complainant, nor has it a right to demand such information from its stockholders, nor has it the opportunity to acquire such information from any other source; but your complainant believes and charges that the aggregate amount is very large, and it will work great injustice both to your complainant and to its shareholders if the opportunity of making such deduction is not allowed to them.

Your complainant avers and charges that the auditor's report in the State of Virginia shows that the residue of bonds, notes and evidences of debt, after deducting the indebtedness of the owner thereof, amounts to the sum of $26,539,995; that is to say, that the moneyed capital in the State of Virginia taxed under its laws, from which the indebtedness of the owners may be deducted, before it is assessed for taxation, is so large, that after such deduction it amounts to the large sum above set forth.

There are in addition to this, other forms of moneyed capital which might be added, but this statement is enough to show to your honors how large the amount of such moneyed capital in the State of Virginia to which the privilege of such deduction is given, and to show further that the amount so invested, as compared with the $4,796,300 of the capital of national banks in the said State, is so large and substantial as to prove that the effect of the said law is to create an

illegal discrimination against the shares of stock in national banking associations.

Third. Because the same section 17 of the act approved March 6th, 1890, assesses the shares of stockholders in national banking associations at the market value without deducting therefrom the real estate held by such banks, and which is part and parcel of the capital thereof, and a material factor in its market value, while the same law requires such deduction to be made from the assessed value of all capital of incorporated joint stock companies not otherwise taxed, and also *requires that real estate shall not* be
12 listed as capital, but shall be assessed and taxed as other specific property when it forms a part of the capital invested, used or employed in any trade or business not otherwise taxed, or of moneys and credits actively used and employed in carrying on a trade or business.

All of this appears by an inspection of the 3rd and 4th clauses of section 8th of the said act, under Schedule C, which has been heretofore fully set forth.

This, your honors will perceive, again violated the first limitation laid down in section 5219 in regard to taxes on the shares of stock in national banking associations, and it further has the effect to assess a double tax upon the owners of national bank stock, taxing the full market value of such shares and then taxing the specific property, which in part makes up the aggregate of such value, a system of double taxation repugnant to the law of Congress and to justice, unusual and distinctly in violation of the constitution of the State of Virginia, which requires that all taxes shall be uniform.

In the case of your complainant the sum of $28,990, a part of its capital, was invested in real estate and is assessed at said sum for taxation, and the tax upon the said real estate so assessed has been duly paid to the treasurer of the city of Lynchburg, *who* whose duty it is to collect said taxes for the State in said city; and it is now demanded that your complainant, or its stockholders, shall pay a further tax upon the same sum which has been assessed in the market value of said shares, which includes and is in part made up of the value of the said real estate.

The amount of real estate which is held by other incorporated joint stock companies, not otherwise taxed, and which forms a part of the capital invested, used or employed in any trade or business not otherwise taxed, or of moneys and credits actively used and employed in carrying on a trade or business, cannot be accurately ascertained without an examination of the records of all the courts of the Commonwealth wherein deeds are admitted to record,
13 but it is known to amount to many millions of dollars and to constitute a large part of other incorporated companies and businesses referred to in said subsections third and fourth.

Your honors will perceive by an inspection of this law, that no other corporations than banks are subject to this double tax, nor are private bankers, building associations, brokers and trust companies, which in Virginia do a large amount of what belongs to the bank-

ing business, subject thereto, and that the result of this curious and senseless distinction between different classes of business results in an illegal and unjust discrimination against the shareholders in national banking associations.

Fourth. Because by the provisions of the same 17th section of the act approved March 6th, 1890, and in the same spirit and with the same curious ideas of equity, it is provided that if such tax as had been theretofore assessed shall not be paid by the bank into the treasury of the State within thirty days after the said assessment, the cashier of such bank and his sureties shall be liable for the amount of the tax imposed under such assessment, and twenty per centum additional as a penalty, which fine upon the cashier for his failure thus to illegally use the money entrusted to his care, subject only to the control and management on the part of the directors of the bank, was to be recovered in the circuit court for the city of Richmond upon fifteen days' notice to him and his sureties. Whether it is proposed to resort to this remedy or not for the purpose of enforcing such payment from your complainant, it is not advised. The law undertakes to give the power and the bank and its cashier are subject to the dangers of its operation.

And it is further advised that said provisions of said laws are void and cannot be legally enforced, and that their enforcement would greatly and oppressively multiply suits.

Under this state of facts, and under these circumstances, your complainant is advised that it has a right to appeal to your honors' court upon its chancery side, and to its equitable powers for protection, and therefore, being without remedy save in such a court, your complainant prays that Morton Marye, the auditor
14 of public accounts of the State of Virginia, be made a party defendant to this bill; that an injunction may be awarded perpetually restraining the said Morton Marye, auditor of public accounts of the State of Virginia, from all proceedings to collect the unpaid tax assessed against its stockholders; that the said laws may be declared unconstitutional and void; that your complainant, its stockholders and its cashier and his sureties may be relieved and discharged from all liability for said unpaid taxes; that subpœna be awarded against the said Morton Marye, auditor of public accounts as aforesaid, but answer under oath is waived; and for such other and further relief, general and special as to equity may seem meet and the circumstances of the case may require.

And it will ever pray, &c.

THE PEOPLE'S NATIONAL BANK OF LYNCHBURG,
By J. W. IVEY.

BLACKFORD, HORSLEY & BLACKFORD,
WILSON & MANSON,
JNO. H. LEWIS,
Counsel.

7, 16, '96.

STATE OF VIRGINIA, } *To wit:*
City of Lynchburg, }

I, G. T. Lavinder, a notary public in and for the city and State aforesaid, do hereby certify that J. W. Ivey, cashier of The People's National Bank of Lynchburg, Virginia, the complainant in the above bill, this day personally appeared before me and made oath that he is the cashier of the said bank and is familiar with its business, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Given under my hand and notarial seal this 16th day of July, 1896.

[NOTARIAL SEAL.]

G. T. LAVINDER,
Notary Public.

15 *Restraining Order.*

Entered July 22nd, 1896.

THE PEOPLE'S NATIONAL BANK OF LYNCHBURG
vs.
MORTON MARYE, Auditor of Public Accounts. } In Equity.

Hearing the verified bill of complaint and after consideration thereof, it is ordered that the defendant Morton Marye do show cause before this court at the next ensuing term thereof why an injunction should not issue as prayed for in the said bill.

It is further ordered that in the meantime and until the further order of this court, the defendant and every person acting under his authority refrain from any and all proceedings to collect unpaid tax assessments against the stockholders in said complaining bank or any of them, leave being given to defendant at any time on notice of twenty days to the attorneys of complainant to move before any of the judges of this court to modify this order.

CHARLES H. SIMONTON,
Circuit Judge.

Marshal's Return.

Executed July 23rd, 1896, by delivering a copy of the within order to Morton Marye auditor of public accounts.

T. D. COGHILL,
Deputy for J. M. Hudgin, U. S. Marshal.

16 *Chancery Subpœna.*

Issued July 23d, 1896.

UNITED STATES OF AMERICA, *Eastern District of Virginia,* } *ss:*

The President of the United States of America to Morton Marye, auditor of public accounts for the State of Virginia, Greeting:

We command you, and every one of you, that you appear before our judges of our circuit court of the United States of America, for the eastern district of Virginia, at the court-room in the custom-house in the city of Richmond, in said district, on the first Monday in the month of September next, to answer the bill of complaint of The People's National Bank of Lynchburg, Virginia, a citizen of the State of Virginia, having its office in the city of Lynchburg, heretofore filed in the clerk's office of said court.

To the marshal of the eastern district of Virginia to execute.

Seal United States Circuit Court, Eastern District of Virginia.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid, this 23d day of July in the year of our Lord one thousand eight hundred and ninety-six, and of our Independence the 121st.

M. F. PLEASANTS, *Clerk.*

MEMORANDUM.—The above-named defendant is notified that unless he enter his appearance in the clerk's office of the said court, at Richmond aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

M. F. PLEASANTS, *Clerk.*

[Endorsed:] No. 494 Circuit court of the United States. eastern district of Virginia. The People's Nat'l Bank of Lynchburg, Va., *vs.* Morton Marye, auditor of public accounts Chancery subpœna. Returnable to first Monday in September A. D. 1896 M. F. Pleasants, clerk. Blackford, Horsley & Blackford, comp't'- sols.

Executed this 23d day of July 1896, by delivering to Morton Marye auditor of public accounts of Virginia the within-named defendant, in person, a true copy of this writ and injunction order.

T. D. COGHILL,
Deputy, for J. M. Hudgin, U. S. Marshal.

17 *Demurrer.*

Filed September 8th, 1896.

In the Circuit Court of the United States for the Eastern District of Virginia.

THE PEOPLE'S NATIONAL BANK OF LYNCHBURG, VIRGINIA,
vs.
MORTON MARYE, Auditor of Public Accounts, &c., &c.

Demurrer.

Morton Marye, auditor of public accounts of the Commonwealth of Virginia, sole defendant, doth demur to the bill of injunction and complaint exhibited against him in this honorable court, by the National Exchange Bank of Lynchburg, Virginia, and in support of his demurrer assigns the following reasons, viz:

First. *Because* this honorable court has not the jurisdiction over the matters complained of as set out in complainant's bill.

The National Exchange Bank of Lynchburg Virginia, is not taxed by the Commonwealth of Virginia and in no manner damnified, injured or in any way or manner affected by the tax imposed by Virginia upon its "stockholders" (Acts 1895–'6, c. 669, p. 726).

The "stock" and the bank's "capital" and other property, personal and real, are distinct and seperate entities and things the former that is the "*bank stock*," may be taxed by Virginia though the bank's "*capital*" cannot be taxed and such taxation is not *double taxation*.

Revised Statutes of the United States, "sec. 5219."

18 Van Allen *vs.* Assessors, 70 U. S. (3 Wall.) 573.
People *vs.* Commissioners, 71 U. S. (4 Wall.) 244.
Farrington *vs.* U. S. 95 U. S. (5 Otto) 679.
First National Bank, Louisville Ky. *vs.* Commonwealth of Kentucky, 76 U. S. (9 Wall.) 353.
Limburger vs. Rouse, 76 U. S. (9 Wall.) 468.
See also as to Virginia's power to tax.
Prov. Bank *vs.* Billings, 4 Peters, 514.
Dobbins *vs.* Commissioners, 16 Peters, 434.
Virginia decisions!!!
State Bank *vs.* Richmond, 79 Va. 113.
Commonwealth *vs.* Ch'ville P. B. & L. Asso. 90 Va. 790.

Second. *Because* the "stockholders" of complainant's banking company each one in proper person is taxed upon his "stock" by the Commonwealth of Virginia and if thereby wronged, aggrieved or injured *severally* and in person, must make complaint or offer defence and cannot transfer this right to another by assignment or otherwise.

The "bank's stockholder" does not complain and is not a party to this suit, therefore cannot be bound nor affected by the proceedings had therein.

In the matter of taxation by the Commonwealth of Virginia, there is no "*privity*" between the bank and its "stockholder," the complainant therefore *is* "*a volunteer*" and an intruder and "busybody" in other men's business and has not "*locus standi*" in this court.

2 Bour. Dic. title "*Privy*" p. 376.
19 Christian & Gunn *vs.* Worsham trustee 78 Va. 100.
Marye *vs.* Parsons, 114 U. S. 325.

Third. Because the matter between the bank's "stockholders" and the Commonwealth of Virginia presents no "Federal" question but pertains and *only* relates to "*State matters,*" namely the Commonwealth's power to tax "*national bank stockholders,*" her citizens resident and non-resident, a power again and again held to be valid and constitutional by the Supreme Court of the United States.

New Orleans *vs.* Benjamin, 153 U. S. 411.
Home Ins. Co. *vs.* New York, 134 U. S. 594.
Van Allen *vs.* Assessors, &c., 70 U. S. (3 Wall.) 573.
Farrington *vs.* U. S. 95 U. S. (5 Otto) 679.

Fourth. *Because* if injured and aggrieved, the "complainant's stockholder" has adequate and full legal and statutory remedy.

See Code of Virginia 1887, sec. 567–568.

Fifth. *Because* complainant has sustained and can sustain no injury, damage or loss under the statutes of the Commonwealth of Virginia; said statutes impose no tax upon national banking companies but every *such* association and company is in terms specific and clear exempted from State taxation.

Acts 1895–'6, c. 669, p. 726.
State Bank *vs.* Richmond, 79 Va. 113.
Commonwealth *vs.* Ch'ville P. B. & L. Asso., 90 Va. 790.

R. TAYLOR SCOTT,
Att'y Gen'l of Va., for Demurrant.

20 *Stipulation.*

Filed & entered Nov'r 12th, 1897.

In the Circuit Court of the United States for the Eastern District of Virginia.

PEOPLE'S NATIONAL BANK OF LYNCHBURG
vs.
M. MARYE, Auditor.

It is agreed between the partie- to these cause- by counsel:

1st. That all the statutes and the constitution of the State of Virginia, so far as either party desires to use the same, shall be regarded in the record.

2nd. That the first-named case shall be tried and heard upon the demurrer and the others of these causes shall await and abide the result of the trial in the court of final decision.

It is agreed by and between counsel for complainant banks and the attorney general of Virginia, counsel for defendant, that these four suits in equity shall be heard together and determined upon the pleadings formulated and filed in "No. 494," The People's National Bank of Lynchburg against Morton Marye, auditor, and that the demurrer of Marye, auditor, in this suit shall be taken and considered by the court as the demurrer and answer *mutatis mutandis* of said Marye in the other named suits.

RO. W. HUGHES, *Judge.*

21 *Amended Bill.*

Filed Nov'r 13th, 1897.

In the Circuit Court of the United States for the Eastern District of Virginia.

THE PEOPLE'S NATIONAL BANK OF LYNCHBURG, VA.,
vs.
MORTON MARYE, Auditor of Public Accounts of the State of Virginia.

During the argument the information for the first time having come to the plaintiff, or its counsel, that there were official statements made by the auditor of public accounts for the State of Virginia, which would show the amount of property taxed under the different classes of Schedule "C" of the tax laws of the State of Virginia the plaintiff moves by its counsel for leave to amend its bill, as follows on page 10, as a part of and at the end of clause 2.

The plaintiff herewith files as exhibits with this bill and as a part thereof official statements made by the auditor of public

accounts for the State of Virginia for the years 1891, 1892, 1893, 1894 and 1895, being for each of said years "A statement showing the assessed value of each kind of personal property in the several counties and cities of the Commonwealth" and it alleges that said statements are true, marked Exhibits Nos. 1, 2, 3, 4, and 5.

Respectfully,

BLACKFORD, HORSLEY & BLACKFORD.
JOHN H. LEWIS.
WILSON & MANSON.

I agree that if this bill is allowed to be amended at this
22 time after argument is about ended that then this proposed amendment shall be regarded as made in the other three cases of the Lynchburg National Banks *v.* Morton Marye auditor and that this amendment shall be considered as offered this day in each of said three cases.

R. CARTER SCOTT,
Att'y Gen'l, for Respondent.

Nov. 13th, 1897.

Endorsed: "Allowed. Ro. W. Hughes, judge."

(Here follow statements marked pp. 23 to 27, inclusive.)

100 *Supplementary Demurrer.*

Filed August 13th, 1900.

In the Circuit Court of the United States for the Eastern District of *Virginia.*

THE PEOPLE'S NATIONAL BANK OF LYNCHBURG, VIRGINIA,
vs.
MORTON MARYE, Auditor of Public Accounts.

The defendant, in addition to the causes of demurrer heretofore filed, and for further cause of demurrer, showeth as follows, namely:

VI.

Because the bill does not aver the names of the shareholders who have the alleged right to offset the indebtedness contended for; nor does it aver the amount of such indebtedness to be deducted from the value of said shares.

VII.

The bill does not aver that the alleged indebtedness of the several shareholders could have been deducted by them from bonds, notes and other evidences of debt held by them, thereby leaving no further indebtedness to be deducted from shares of stock.

VIII.

The bill does not aver what part of such bonds, notes and other evidences of debt constitute moneyed capital, nor that if any part thereof is moneyed capital that the proportion of the same is so material as to work a discrimination against shareholders of national banks.

101 IX.

The bill does not aver that the moneyed capital mentioned therein, if it be moneyed capital at all, is of such a character as to compete, directly or indirectly, with the moneyed capital represented by the shares of national banks.

A. J. MONTAGUE,
Attorney General and ex Officio Counsel for Respondent.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

Morton Marye makes solemn oath and says that he is the auditor of public accounts for the Commonwealth of Virginia, and the defendant in the above-styled cause; and that the foregoing demurrer is not interposed for delay.

MORTON MARYE,
Aud. Pub. Acc'ts.

Sworn to and subscribed before me this 14th day of July, 1900.
D. A. RITCHIE,
Notary Public.

102 *Stipulation & Order.*

Filed and entered August 13th, 1900.

In the Circuit Court of the United States for the Eastern District of Virginia.

PEOPLE'S NATIONAL BANK OF LYNCHBURG
vs.
MORTON MARYE, Auditor of Public Accounts.

On the motion of the plaintiff, leave is given it to file its second amended and supplemental bill. And the plaintiff and defendant having entered into a stipulation in writing, which is as follows:

"PEOPLE'S NATIONAL BANK OF LYNCHBURG
vs.
MARYE, Auditor of Public Accounts,

LYNCHBURG NATIONAL BANK OF LYNCHBURG
vs.
SAME,

NATIONAL EXCHANGE BANK OF LYNCHBURG
vs.
SAME,

and

THE FIRST NATIONAL BANK OF LYNCHBURG
vs.
SAME.

Pending in United States circuit court for the eastern district of Virginia, at Richmond.

Agreement Between Plaintiffs and Defendant.

The stipulation entered into, and entered by the court Nov., 12th, 1897, inadvertently refers to an answer. No answer has been filed. And the cases will be heard on the bills and exhibits and the amended bills and exhibits heretofore filed, and also the second amended and supplemental bills and exhibits if the court permits them to be filed, and demurrers and amended and supplemental demurrers to all of said bills.

The defendant having been furnished last December or January with a memoranda of the proposed amended and supplemental bills, and the first part of February, 1900, with copies, the defendant waives all notice, service of copies or other formalities, but does not consent that they should be allowed, but submits that matter to the

court. Either side may use as a part of the record any tables in the reports of the auditor of public accounts which are filed with the bills and amended and supplemental bills, but those filed with the amended and supplemental bills are only agreed to be used if the court permits the amended and supplemental bills to be filed.

WILLIAM V. WILSON,
JOHN H. LEWIS,
103 BLACKFORD, HORSLEY & BLACKFORD,
For Plaintiffs.
A. J. MONTAGUE, *Attorney General.*"

by which all formal and preliminary steps and proceedings mentioned in said stipulations were waived, the defendant thereupon filed its dem-rrer to the original, amended, and amended and supplemental bill, and the plaintiff joined in said demurrer. And thereupon this cause was submitted for decision on the original and amended bills and supplemental bill and the exhibits filed with said bills as parts thereof, and the said demurrer and joinder therein. The aforesaid stipulation is in addition to the former stipulation, and not a substitute therefor, except so far as it corrects the former in indicating that an answer had been filed.

13th August, 1900.

EDMUND WADDILL, JR.,
U. S. Judge.

104 *Opinion of Court.*

Filed February 5th, 1901.

In the Circuit Court of the United States for the Eastern District of Virginia.

THE PEOPLE'S NATIONAL BANK OF LYNCHBURG
vs.
MORTON MARYE, Auditor of Public Accounts,

FIRST NATIONAL BANK OF LYNCHBURG
vs.
SAME,

LYNCHBURG NATIONAL BANK
vs.
SAME,

and

THE NATIONAL EXCHANGE BANK OF LYNCHBURG
vs.
SAME.

The four national banks above named (the first being a test case) are resisting the payment of certain taxes claimed by the State of Virginia to be due by their stockholders under three acts of assembly of the State of Virginia, the first passed on the 6th of March,

1890, and the other two on the 3rd of March, 1896. These acts are herein set forth in full, as they are necessary to an intelligent understanding of the questions presented for determination in these causes.

CHAP. 244.

An act to provide for the assessment of taxes on persons, property and incomes, and on licenses to transact business and imposing taxes thereon for the support of the government and public free schools, and to pay the interest on the public debt, and prescribing the mode of obtaining licenses to sell wine, ardent spirits, malt liquors, or any mixture thereof, in cases where a court certificate is required.

Approved March 6, 1890.

105 "SEC. 17. No tax shall be assessed upon the capital of any bank or banking association organized under the authority of this State or of the United States; but the stockholders in such banks or banking associations shall be assessed and taxed on the market value of their shares of stock therein at the same rate as is assessed upon other moneyed capital in the hands of individuals residing in this State. It shall be the duty of each commissioner of the revenue annually, during the month of May, to report to the auditor of public accounts the name of each bank or banking association doing business in his district, and the names of the officers thereof, and to assess the share or shares of each stockholder in the banks or banking associations as aforesaid at the market value thereof as of the first day in February in each year, and it shall be the duty of each of such banks or banking associations forthwith to pay into the treasury of the State the tax imposed by law upon such assessment of the shares aforesaid on or before the first day of June. If such tax be not paid within thirty days after the assessment of said shares, the cashier of the bank or banking association failing to make payment, and his sureties, shall be liable for the same, and twenty per centum upon the amount to be recovered, on motion of the auditor of public accounts, in the circuit court of the city of Richmond, upon fifteen days' notice, according to the provisions of the section seven hundred and thirteen of the Code of Virginia. The real estate of all banks and banking associations shall be assessed upon the land books of the commissioners of the revenue with the same taxes with which other real estate is assessed."

CHAP. 642.

An act to authorize and empower the auditor of public accounts to collect taxes heretofore assessed upon bank stock held by resident and non-resident stockholders.

Approved March 3, 1896.

1. Be it enacted by the General Assembly of Virginia, That the holders of bank stock or the stock of any banking association doing

business in this State, resident and non-resident, shall be assessed with the tax imposed thereon by law in the city, town or district wherein the bank or banking association is located, and said tax shall be the first lien upon said stock, no matter in whose hands found, and have priority over any and all liens by deed of trust, mortgage, bill of sale, or other assignment made by the owner, and take priority over all liens by execution, garnishment, or attachment process.

2. It shall be the duty of the auditor of public accounts, as soon as practicable after the passage of this act, to furnish the cashier of the banks or banking associations doing business in this State with a list of its stockholders heretofore assessed with taxes upon their bank stock who have not paid said tax, which list shall give the name of the stockholder, amount of tax, when assessed, and the sum total due to the Commonwealth by each stockholder. The bank or banking association thus notified, should said bank or banking association so desire and elect, may pay to the auditor the tax assessed upon the stock held by its stockholders; provided payment shall be made on or before the first day of July, eighteen hundred and ninety-six.

106 3. But should the privilege conferred by the preceding section be declined or not availed of by the bank or banking association aforesaid, then it shall be the duty of the auditor without delay to notify the attorney general and give him a copy of the lists furnished the cashier of the bank or banking association aforesaid, and the attorney general, by motion, shall proceed to collect said taxes from the individual stockholder. This motion shall be cognizable by and made in the circuit court of Richmond city after ten days' notice to the stockholder, and may be served upon non-resident defendants in the mode provided by section thirty-two hundred and eight of the Code of Virginia.

4. This act shall be in force from its passage.

SEC. 17. Taxes on banks.—No tax shall be assessed upon the capital of any bank or banking association organized under the authority of this State or of the United States, but the stockholders in such banks or banking associations shall be assessed and taxed on the market value of their shares of stock therein at the same rate that is assessed upon other moneyed capital in the hands of individuals residing in this State. Each bank or banking association aforesaid, on the first day of February in each year, shall make up and return to the commissioner of the revenue of the county, city, town or district in which said bank or banking association is located a report, in which shall be given the names of the stockholders, the number of shares owned or held or controlled by each, the market value of said stock, and the stockholders' residence. It shall be the duty of said commissioner of the revenue, on or after the first day of February, in each year, to assess each stockholder upon the shares of stock estimated at the market value on said first day of February in each year a tax of thirty cents on each hundred dollars' value thereof; the proceeds of which shall be applied to the support of the government, and a further tax of ten cents on every hundred dol-

lars' value thereof, which shall be applied to the support of the public free schools of the State and make out three assessment-lists, give one to the bank or banking association aforesaid, located in his city, county, town or district, and one to the auditor of public accounts, and retain one. The assessment-list delivered to said bank or banking association shall be notice to the bank or banking association of the tax assessed against its stockholders and each of them, and have the legal effect and force of a summons upon suggestions formally issued and regularly served. The tax assessed upon each stockholder in said bank or banking association shall be the first lien upon the stock standing in his name and upon the dividends due and to become due thereon, no matter in whose possession found, and have priority over any and all liens by deed of trust, mortgage, bill of sale or other assignment made by the owner or holder, and take priority over all liens by execution, garnishment or attachment process sued out by creditors of the stockholder. The bank or banking association shall hold the dividend or other fund which belongs to the stockholder and in its custody at the time the assessment-list is received, and that thereafter shall come under its control, for the use of the Commonwealth, and apply the same to the payment of the tax assessed, and when thus applied shall be acquitted and discharged from all liability to the stockholder for the money thus disbursed; provided that after making report to the commissioner of the revenue any bank or banking institution, on or before the first day of June in each year, which shall so elect,
107 may pay the taxes assessed against the stockholders directly to the auditor of public accounts. But should said bank or banking association fail to elect and pay into the treasury the tax assessed against its stockholders on or before the first day of June in each year, then as soon thereafter as practicable the auditor of public accounts shall transmit to the treasurer of the county or city in which said bank or banking association is located a copy of the assessment-list furnished him by the commissioner of the revenue, and it shall be said treasurer's duty to collect the taxes therein assessed, and to this end levy upon the stock of the tax-payer or so much thereof as is necessary to pay said tax, and sell the same at public auction for cash, as other chattels and personal property are sold under execution. He shall give to the purchaser a bill of sale made under his hand and seal. The bank or banking association in which such bank stock stands on presentation by a purchaser of his bill of sale shall cause the stock therein described to be transferred to said purchaser, and he shall take a clear and unencumbered title to the stock purchased. Should the taxes assessed against bank stockholders evidenced by the bids aforesaid be not paid or collected as hereinbefore provided, the lists aforesaid shall stand and be treated and have the legal effect of tax tickets regularly made out against each of said stockholders named in said lists as to which tax the right of levy and distress had accrued to the Commonwealth, and the treasurer shall proceed to collect the same by levy or distress, and possess all and singular the authority and power conferred upon him by law to collect other State taxes, and be governed by

sections six hundred and twenty-two and six hundred and twenty-three of the Code of Virginia. The bank or banking association which shall fail or neglect to comply with each and every provision of this act for each separate offence shall be fined not less than one hundred nor more than five hundred dollars, which fine shall be recovered upon motion, after five days' notice, in the county, circuit, corporation or hustings court of the county, city or district in which said bank or banking association is located. Said motion shall be in the name of the Commonwealth and presented by the attorney for the Commonwealth of the court in which the motion is brought or made. The real estate of all banks and banking associations shall be assessed on the land books of the commissioners of the revenue with the same taxes with which other real estate is assessed.

2. This act shall be in force from its passage."

The complainants filed their original bills assailing the validity of the tax for the years 1891, '2, '3, '4, and '5 assessed under the first-named act and made collectable under the second act of the 3rd of March, 1896, providing for the collection of delinquent taxes, and insisted that said acts were unconstitutional, because, (1), under the first act no legal and proper assessments were provided for or ever made against the stockholders of the said several banks; (2), because under said act the assessments were made without per-
108 mitting any deduction from the market value of such stock on account of the existing indebtedness of the bank's shareholder, as allowed in assessing the value of bonds, notes, and other evidences of debts, including bonds due from railroads, canal companies, bonds of towns, cities and counties, bonds of other States and corporations, demands and claims, however evidenced, owing to or coming to the persons under the laws of the Commonwealth, which was averred to be a discrimination against the holders of shares of national bank stocks, in violation of the provisions of section 5219 of the United States Revised Statutes; (3), because under the said act of the 3rd of March, 1896, the shares of stockholders in national banks were assessed at their market value without deducting the real estate held by the said bank.

And by amended and supplemental bills, subsequently filed, the complainants resp-tively attacked the validity of the said act of the 6th of March, 1890, because the same was claimed to be in contravention of article 10, section 16 of the constitution of the State of Virginia, in that it did not sufficiently set forth the tax and the object to which it was to be applied, and further assailed the second act of the 3rd of March, 1896, and alleged that the taxes assessed thereunder for the years 1896 and '7 were not due and that the said act, for the reasons above named, was also unconstitutional.

To these several bills, the auditor of public accounts, through the attorney general of Virginia, appeared and filed a general demurrer, in which coms. joined and claimed that the several acts were constitutional, denied the right of the banks to maintain these suits in behalf of their stockholders, and insisted that the court was

without jurisdiction to interpose in behalf of the banks and that no case was made for the interposition of a court of equity.

109 WADDILL, *District Judge:*

In the determination of the matters presented for the consideration of the court, two preliminary questions arise. First, as to whether the banks under the said statutes have a right to maintain these suits in behalf of their stockholders, and second, whether a case has been made for the interposition of a court of equity to restrain the State in the collection of its revenues. In the consideration of these questions, in the view taken by the court, the original and supplemental bills should, for a moment, be considered separately, as the original bill only assails the act of March 6, 1890, and the act of the 3rd of March, 1896, providing for the collection of delinquent taxes due by the stockholders of the banks.

Although it is alleged that the taxes under the act of the 6th of March, 1890, were regularly from year to year assessed and demanded of the banks, it is admitted in the pleadings that no steps were taken or threatened looking to the collection of the same until after passage of the act of March 3rd, 1896, providing for the collection of delinquent taxes, and as to that the averment is "your complainant is now informed, believes and charges that the auditor of public accounts of Virginia is now demanding of your complainant the said several sums taxed against the stock upon the assessments aforesaid and is proceeding to take such steps as are necessary for the purpose of collecting the same under the powers vested in him under said acts," and "that the action on the part of the auditor in demanding said payments from your complainant and from its several stockholders is illegal and void." And in reference to the remedy by proceeding under the act of March 6, 1900, against the bank's cashier and his sureties, the allegation is "whether it is proposed to resort to this remedy or not for the purpose of en-
110 forcing such payment from your complainant, it is not advised. The law undertakes to give the power and the bank and its cashier are subject to the dangers of its operation." It is quite apparent that the object of the act of the 3rd of March, 1896, was to authorize the collection of delinquent taxes assessed upon bank stockholders under the act of March 6, 1890, and that until said act was passed no real effort was made to collect these taxes, and, if made, complainants apprehended no danger from such threat as the bill in this cause was not filed until July, 1896, more than four months after the passage of the delinquent act. And it is manifest that the threatened action was under the delinquent act of March 3rd, 1896, and not against the bank's cashier under the previous act. Complainants' right to sue in behalf of their stockholders under the act of March 6, 1890, may be conceded for the sake of argument, but no case for injunction against the State's officers would exist upon the pleadings, as the only allegation of the bill, justifying the granting of an injunction is the one as to the apprehension of a multiplicity of suits. Such ground for injunction could not be availed of by the banks under the act, as the banks

and not their stockholders would be proceeded against, and in single actions at the suit of the State against the banks' cashiers respectively and in which cases could be raised all the questions sought to be settled by way of injunction in these causes. The complainants do not charge that any threatened action has been or is about to be taken, either against the bank or its cashier, but expressly negative the idea of either and say that it is not advised as to what is the State's purpose in these respects. Specific allegations as to the certainty of litigation ought at least to be made to justify a court of equity interfering to prevent a multiplicity of suits. Courts
111 of equity are seldom called upon to exercise a more delicate power than that of granting injunctions to enjoin the collection of a State's revenues. Such power on the part of courts is expressly inhibited by the Federal statutes as to taxes due the United States, and Federal courts should proceed with great caution in exercising such power as to taxes due the State. It is a prerogative, the exercise of which may result in great harm, and only where the right is clear, the necessity for action urgent, and the absence of any other remedy apparent should a court of equity interpose. The Supreme Court of the United States in Pittsburgh R. &c., *v.* Board Pub. Works, 172 U. S., 32, 37, speaking through Mr. Justice Gray, said:

"The collection of taxes assessed under the authority of a State is not to be restrained by writ of injunction from a court of the United States, unless it clearly appears, not only that the tax is illegal, but that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction."

In Dows *v.* Chicago, 11 Wall., 108, a citizen of the State of New York, owning shares in a national bank doing business in the city of Chicago, sought by bill in equity to enjoin the collection of a tax assessed by the city of Chicago upon its shares, for the reason, among others, that the tax was unconstitutional and void, because not equal and uniform as required by the constitution of the State, and because also such shares were not taxable by the city at the domicil of the defendant. The Supreme Court, through Mr. Justice Field, at page 112, said:

"Assuming the tax to be illegal and void, we do not think any ground is presented by the bill, justifying the interposition of a court of equity to enjoin its collection. The illegality of the tax and the threatened sale of the shares for its payment constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction, before the pre-
112 ventive remedy of injunction can be invoked."

In the State Railroad Tax cases, 92 U. S., 575, 613, '15, Mr. Justice Miller, speaking for the Supreme Court, after stating that it had been repeatedly decided that the mere illegality of the tax com-

plained of, nor its injustice nor irregularity, of themselves, gave the right of injunction in a court of equity, said:

"We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes. But we may say that, in addition to illegality, hardship or irregularity, the case must be brought within some of the recognized foundations of equitable jurisprudence; and that mere errors or excess in valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment of taxes, will not justify a court of equity to interpose by injunction to stay the collection of a tax."

Lumber Company *v.* Hogwood, 20 F. R., 422.

Stopping the State's revenue is a serious matter, except in cases where it is essential to the maintenance of the citizen's rights, and the power of a court of equity to do full justice in such a case, to the tax-payer on the one hand, or to the State on the other, is so difficult of accomplishment, if indeed it can be done at all, that in doubtful cases the injunction should be denied. The case at hand is a striking illustration of the embarrassments resulting from the interrvention of courts of equity by writs of injunction. Aside from other complications that might arise by reason of the inability of the court properly to deal with the matter of taxation, it appears that the State has not been paid its taxes either by the bank or its stockholders. Its hand is stayed at the instance of the bank. The stockholders, from whom the tax is due, are not before the court, and the result is, even in the event of a favorable decision to the State, it may lose all its dues entirely.

113 This brings us to the consideration of the act for the collection of delinquent taxes of the 3rd of March, 1896, also assailed in the original bill. Have the complainants a right to institute these suits in behalf of their stockholders to prevent the enforcement of the provisions of this act? They manifestly have not. As before stated, the object of the act is to provide for the collection of delinquent taxes due by the stockholders of banks under the act of March 6, 1890, and if the portion of the said act, in reference to collecting the taxes due by the stockholders from the cashier of the bank, is not repealed by implication, it is a remedy cumulative to that authorized by that act, and under it no duty or liability is imposed upon the banks, further than that the banks are authorized, should they so desire, upon receiving a list of the assessments against their stockholders, remaining in arrears, to pay the same to the auditor of public accounts. It is entirely optional with the banks to do this. No requirement in this regard is made of them and no liability is prescribed for their failure to elect to pay. Upon the bank's not electing to pay the money, it is the duty of the auditor to furnish a copy of such list to the attorney general, who shall proceed by motion in the circuit court of the city of Richmond against the individual stockholder, after giving the notice prescribed by the statute, to collect such taxes. The stockholder thus proceeded against could not, upon the theory of preventing a multi-

plicity of suits, seek the intervention of a court of equity to restrain the collection of this tax. Upon the payment of the taxes, his entire claim ought to be determined in a single action. Dows *v.* Chicago, 11 Wall., *supra*, 108, 112; Pittsburgh R. W. *v.* Board Pub. Works, *supra*, 36, 38. And moreover, a multiplicity of suits refers not to the number of persons liable to suits, but to the num-
114 ber of suits which may be instituted against a particular person. The tax-payer, aside from the other remedies afforded him under the law, of paying under protest and suing to recover the money, or suing the officer who makes the collection, for damages, is given a special remedy in a court of justice for the collection of the tax due by him, in which every defence he seeks to make here can be made, including the existence of a Federal question, and the case carried through the State courts, if need be, into the Federal courts. The bank, upon whom no liability is thus imposed, should not be permitted, in behalf of its stockholders, to do what the stockholders themselves could not do. Cases in which banks are allowed to institute suits of the character here sought to be maintained in behalf of their stockholders are clearly distinguishable from these cases in so far as the right to sue under the act in reference to delinquent taxes is concerned. The leading case on the subject is that of Cummings *v.* National Bank, 101 U. S., p. 154. In that case Mr. Justice Miller, at page 156, after reciting what the bank was required to do by the act of the State of Ohio, viz., among other things, to report to the auditor of the county for assessment the names of all its original stockholders, their places of residence, amounts held by each of them, with all facts necessary to a fair assessment, the authority of the bank to pay the tax on the shares of the stockholder and deduct the same from the dividends or any funds of the stockholders in its hands, or coming afterwards in its possession, and forbidding the bank to pay any dividends on its stock, or transferring it or permitting it to be transferred on its books as long as said tax remained unpaid, said:

"It is true, the statute of Kentucky went further than the Ohio statute, by declaring that the bank *must* pay the tax, while the latter only says it may. But the Ohio statute, by the remedies it provides, places the bank in a condition where it must pay the tax, or
115 encounter other evils of a character which create a right to avoid them by instituting legal proceedings to ascertain the extent of its responsibility before it does the acts demanded by the statute.

It is next suggested that since there is a plain, adequate, and complete remedy by paying the money under protest and suing at law to recover it back, there can be no equitable jurisdiction of the case.

The reply to that is that the bank is not in a condition where the remedy is adequate. In paying the money it is acting in a fiduciary capacity as the agent of the stockholders,—an agency created by the statute of the State. If it pays an unlawful tax assessed against its stockholders, they may resist the right of the bank to collect it from them. The bank as a corporation is not liable for the tax, and occupies the position of stakeholder, on whom the cost and

trouble of litigation should not fall. If it pays, it may be subjected to a separate suit by each shareholder. If it refuses, it must either withhold dividends, and subject itself to litigation by doing so, or refuse to obey the laws, and subject itself to suit by the State. It holds a trust relation which authorizes a court of equity to see that it is protected in the exercise of the duties appertaining to it. To prevent multiplicity of suits, equity may interfere."

So far as the collection of this tax is concerned under the act for the collection of delinquent taxes, no obligation or liability whatever is imposed on the bank, nor is it placed in any fiduciary relation as to its stockholders in reference to such tax by said act, or indeed placed in any position where it can be liable either for doing or for not doing any act whatever.

Assuming that the bank may interpose in behalf of its stockholders under this act, something more than a mere suggestion that by so doing it would prevent a multiplicity of suits ought to appear to justify a court of equity in restraining a State in the collection of its taxes. If the stockholders themselves can by having the State pursue the remedy provided by it for the collection of these taxes, and in such proceedings secure their rights, the bank, in any event, in a matter in which it is not personally involved, should not be allowed to interpose except to prevent a manifest miscarriage of justice.

116 We are now to consider the second act of the 5th of March, 1896, under which the taxes for the years 1896–'7 have been assessed. This is an amendment of section 17 of the original act and the amendment provides an entirely different method and plan for assessing and collecting taxes against the stockholders in national banks, and as to it what has been said of the right of a bank to interpose in behalf of its stockholders under the act of the same date, in reference to delinquent taxes, is not intended to apply, as under this act, upon a proper case-made for injunction, it would seem that the bank, in behalf of its stockholders, would have a right to interpose by suit in equity, for upon it serious obligations are imposed, and against it heavy penalties enacted. Whether the mere allegation of the prevention of a multiplicity of suits would of itself suffice to justify the court's interposition by injunction, in the collection of the State's revenue, need not be passed upon in this case, with the view the court takes of this statute. The right of the bank so to proceed under this action in a proper case, being apparent, it is necessary to pass upon the validity of this act. In determining this question, the court has naught to do with the policy or wisdom of the act in question, but alone with the power of the State to pass it. It is assailed chiefly because of the separate tax upon the bank's real estate, the failure to allow its stockholders to deduct the debts due by them from their stock before assessing the same for taxation, as is done in reference to other classes of personal property in the State, and because of the alleged denial of due process of law to the tax-payer in the assessment of the taxes.

The taxation by the State of the real estate of the bank in addition to that placed upon the shares of the stockholders is not unequal

taxation in the sense contemplated by the constitution and does not therefore invalidate the act. Section 5219 of the Revised
117 Statutes contemplates that the tax on real estate may be imposed independently of the tax upon the share of the stockholder. It may be said, in passing, that the taxation of the shareholders in national banks, independently of the real estate owned by the banks, is the same as that adopted in reference to taxation of the shareholders in State banks, and at least does not appear to have been intended as any discrimination against national bank shares. The real estate is considered a part of the bank's capital or property, rather than that of the shareholders' interest in its certificate of stock. This seems to have been the view taken by the Supreme Court in National Bank *v.* Commonwealth, 9 Wall., 353, 358. Mr. Justice Miller, speaking for the court, said:

"In the several recent decisions concerning the taxation of the shares of national banks, as regulated by sections 40 and 41 of the act of Congress of the 3rd of June, 1864, it has been established as the law governing this court that the property or interest of a stockholder in an incorporated bank, commonly called a share, the shares in their aggregate totality being called sometimes the capital stock of the bank is a different thing from the moneyed capital of the bank held and owned by the corporation. This capital may consist of cash, or of bills and notes discounted, or of real estate combined with these. The whole of it may be invested in bonds of the Government, or in bonds of the State, or in bonds and mortgages."

Com. *v.* Charlottesville P. B. & L. Co., 90 Va., 792, '3.

It is insisted that the statute is void because the tax assessed is greater than that laid by the State of Virginia on other moneyed capital in the hands of individuals residing within the State, the contention being that because the State allows its tax-payers the privilege of deducting before returning for taxation the amount of their individual indebtedness from taxes due by them from all "bonds, notes and other evidences of debts, including bonds due from canals and railroad companies, bonds of counties, cities and towns, and bonds of other States and corporations; demands and claims however evidenced and whether secured by deed of
118 trust, judgment or not" that therefore such act operates as a discrimination in favor of the owners of that class of property against the owners of shares in national bank stocks.

The question of a right of a national bank shareholder to have his indebtedness deducted from his share of the stock before assessment of the same for taxation has recently been decided adversely by the supreme court of appeals of Virginia. Burgess *v.* Smith, 95 Va., 695.

As to what is moneyed capital within the meaning of the national banking act, and what will be deemed a discrimination against the shareholders in national banks by reason of allowing a deduction on account of indebtedness in favor of the owners of other classes of personal property has been so often under review of late by the courts of last resort that any general discussion is unnecessary.

Briefly, it may be said that absolute equality of taxation is not expected, and the purposes of the national banking act are satisfied when exemptions are not made from taxation on the investments in the shares of institutions or individuals carrying on a similar business to that of the bank, and upon persons engaged in operations and investments of a like character as the bank. The act does not make the tax on personalty generally the measure of tax on national bank shares but the tax on the moneyed capital in like use. Hepburn *v.* School Directors, 23 Wall., 480; Boyer *v.* Boyer, 113 U. S., 689; Marchants' Bank *v.* New York, 121 N. Y., 138; Bell's Gap R. R. *v.* Pa., 134 U. S., 232, 237; National Bank *v.* Mayor, &c., of Balto., C. C. A., 11 Fed., 124; Aberdeen Bank *v.* Chehalis Co., 166 U. S., 440. In the last-named case will be found a very full discussion of the whole subject, with a review of most of the cases bearing thereon, from which it will appear that the act in question is not invalid for this reason.

119 Complainants insist that this act of the 3rd of March, 1896, providing a new assessment for taxes against national banks, is void, because of the lack of due process of law, and they mosy vigorously assail this act and the act of the 6th of March, 1890 for this reason. The principles governing the determination of this question under these two acts, by reason of the peculiar terms of the respective acts, depend upon entirely different considerations. Under the first-named act (the constitutionality of which the court deems it unnecessary to pass upon) the assessment seems clearly to be in the nature of a judicial act and the bank's cashier is made liable for the amount of the tax, but no provisions is made for its becoming self-collectable or in the nature of an execution, but it is expressly provided that the same shall be recoverable of the bank's cashier and sureties by motion upon fifteen days' notice in the circuit court of the city of Richmond, and the question turns on whether or not this requirement of the State to seek the intervention of a court of justice in the collection of its revenues does not of itself constitute due process of law.

Under the second act, upon the assessment being made of the taxes, the tax bills become self-executing and can be enforced by levy, and the question turns upon the character of the act performed by the assessor in making the assessment; in a word, whether he acts judicially or otherwise. A careful inspection of the act shows that the assessor performs no judicial act in what he does, the fair interpretation being, that the assessment made by him is upon the market value of the stock as reported to him by the bank, and the act itself fixes the amount of the tax, and, under this view, further notice to the tax-payer of the assessment is not required. A most interesting discussion of this whole subject is to be found in

120 the leading case of Hagar *v.* Reclamation District, No. 108, 111 U. S., 701. In this case, Mr. Justice Field, at page 708, in discussing the question of the failure of the statute under which the assessment was made to provide for notice and the citizen an opportunity to be heard ordinarily, said:

"But where the taking of property is in the enforcement of a tax,

the proceeding is necessarily less formal, and whether notice to him is at all necessary may depend upon the character of the tax, and the manner in which its amount is determinable. The necessity of revenue for the support of the Government does not admit of the delay attendant upon proceedings in a court of justice, and they are not required for the enforcement of taxes or assessments. As stated by Mr. Justice Bradley in his concurring opinion in Davidson *v.* New Orleans, ' in judging what is " due process of law " respect must be had to the cause and object of taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or some of these; and if found to be suitable or admissible in the special case, it will be adjudged to be " due process of law," but if found to be arbitrary, oppressive or unjust, it may be declared to be not " due process of law." ' "

And at page 709, Mr. Justice Field further said:

" Of the different kind- of taxes which the State may impose, there is a vast number of which, from their nature, no notice can be given to the tax-payer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes (not dependant upon the extent of his business), and generally, specific taxes on things, on persons, or occupations. In such cases, the legislature in authorizing the tax, fixes its amount, and that is the end of the matter. If the tax be not paid, the property of the delinquent may be sold, and he be thus deprived of his property. Yet there can be no question that the proceeding is due process of law, as there is no enquiry into the weight of the evidence, or other element of a judicial nature, and nothing could be changed by hearing the tax-payer No right of his is, therefore, invaded. Thus, if the tax on animals be a fixed sum per head, or an articles a fixed sum per yard, or bushel, or gallon, there is nothing the owner can do which can affect the amount to be collected from him. * * * But where a tax is levied on property not specifically, but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they may obtain, a different principle comes in. The officers in estimating the value, act judicially; and in most of the States provision is made for the correction of errors committed by them, through boards of revision or equalization, sitting at design-ted periods provided by law to hear complaints respecting the justice of the assessments."

121 The bank itself, having fixed the market value of its stock, and the statute the amount of the tax, the assessors' duty was a mere ministerial one and the act is not void because of the lack of due process of law.

Complainants further assail the validity of the act of the 6th of March, 1890, and the amendment thereof of the 3rd of March, 1896, because the rate of tax prescribed is not uniform as required by the constitution of the State and because also the original act is in violation of the provisions of the constitution, in that it fails to state distinctly the amount of the tax levied and the object to which it is to be applied, as required by article ten, section sixteen of the constitution of the State. These objections do not appear to be well founded and the acts themselves have been more than once passed

upon by the court of last resort in this State and in so far as their validity is concerned under the State constitution, this court will follow the decisions of the State court. Commonwealth *v.* Charlottesville P. B. & L. Co., *supra*, 90 Va., 790; Burrows *v.* Smith, 95 Va., 694; Mer. Bank *v.* Pa., 167 U. S., 461.

A decree may be entered, dissolving the temporary restraining orders heretofore granted in these causes and dismissing the complainants' bills.

122 *Final Decree.*

Entered December 31st, 1901.

In the Circuit Court of the United States for the Eastern District of Virginia.

THE PEOPLE'S NATIONAL BANK OF LYNCHBURG
vs.
MORTON MARYE, Auditor of Public Accounts. } In Equity.

This cause came on this day to be again heard upon the bill, the amended and supplemental bills and exhibits filed therewith, the demurrer and amended demurrer, and joinder therein, and was argued by counsel.

On consideration whereof the court doth adjudge, order and decree that the demurrer and amended demurrer herein interposed be, and the same *is* hereby sustained; that the temporary injunction heretofore awarded be, and the same is hereby permanently dissolved; and that the bill, and amended and supplemental bills aforesaid of the said complainant be, and the same are hereby dismissed, with the costs to the defendant to be taxed.

By consent of parties, given in open court, only so much of the record is to be copied on appeal as will fully present the whole case, with the understanding that if any portion of the record be omitted, which either party desires to be included in the record, on said appeal, the right is reserved to have such omitted portion made a part of said record.

EDMUND WADDILL, JR., *U. S. Judge.*

123 *Petition for Appeal.*

Filed February 25th, 1902.

In the Circuit Court of the Eastern District of Virginia.

PEOPLE'S NATIONAL BANK OF LYNCHBURG
v.
MORTON MARYE, Auditor of Public Acc'ts of State of Virginia. } In Equity.

To the honorable the judges of the circuit court:

The People's National Bank of Lynchburg, Virginia, a corporation duly incorporated under the national banking act of the United

States of America, the complainant in the above cause, being aggrieved by the decree of the circuit court of the United States for the eastern district of Virginia in this cause, by this petition prays that it may be allowed to appeal to the Supreme Court of the United States from the decree which was passed herein on the 31st day of December, 1901, and that a proper citation may be issued and served upon the defendant to its said bill of complaint, Morton Marye, auditor of public accounts of the State of Virginia, and was also defendant in its first amended bill and its second amended and supplemental bill which were filed herein, respectively, on the 22nd day of July, 1896, the 13th day of November, 1897, and the 10th day of February, 1900; that a record of the proceedings in this cause may be transmitted to the said Supreme Court of the United States; that the said decree may be reversed and that a decree may be directed to be passed in favor of the complainant and in accordance with the prayer of its said bill of complaint and its said first amended and its said second amended and supplemental bill respectively.

And the petitioner further prays that your honorable court will prescribe the amount of the appeal bond to be given and the petitioner files herewith the following assignment of errors.

JOHN H. LEWIS,
WILSON & MANSON,
BLACKFORD, HORSLEY & BLACKFORD,
For Petitioner.

124 *Assignment of Errors.*

Filed February 25th, 1902.

I. That the court erred in decreeing against the complainant in sustaining the demurrer and supplemental demurrer of the defendant to its original and it- first amended bill and second amended and supplemental bill, and in dismissing with costs against the complainant, its bill and its first amended bill and its second amended and supplemental bill filed herein, respectively, July 22nd, 1896, November 13th, 1897 and February 10th, 1900.

II. That the court erred in not passing an order perpetually restraining the defendant in this cause from demanding of the complainant, or its officers or its shareholders the State tax of forty cents on the hundred dollars assessed upon the valuation made of its shares of capital stock for each of the years 1891, 1892, 1893, 1894, 1895, 1896 and 1897.

III. That the said court erred in not everruling the demurrer and supplemental demurrer of the defendant to the original and first amended bill, and second amended and supplemental bill of the complainant; and that the said court should have decreed that taxes assessed against the shareholders of the complainant for the years 1891, 1892, 1893, 1894, 1895, 1896 and 1897 were void as being in contravention of article 14, section I, of the amendments to the Constitution of the United States, as the said assessments were made

without due process of law; and should have decreed that the taxes assessed against the shareholders of the complainant for the years 1891, 1892, 1893, 1894 and 1895 were null and void under section 16, article 10, of the constitution of the State of Virginia, because the statute of the State of Virginia, imposing a tax on shares of stock of the complainant did not distinctly state the tax, and the object to which the tax was to be applied without referring to any other law to fix such tax or object; and should have decreed that the legislature of Virginia had no power to embrace the value of the real estate of the complainant in assessing the value of the shares of stock of the complainant; and should have decreed that the shareholders of the complainant had the same right as the owners of other moneyed capital in the hands of individual citizens of the State
125 of Virginia to deduct from the valuation of their shares of stock, all bonds, demands, or claims not otherwise deducted, owing to others from the said shareholders as principal debtors.

IV. That the court erred in not declaring and decreeing that section 17 of an act of the legislature of Virginia, approved March 6th 1890, page 205, Acts 1889–'90, providing for the assessment of the shares of stock of each stockholder of the complainant, as well as of other national banks in the State of Virginia, and for the payment of the tax imposed under said section, is unconstitutional and void under article 14, section I, of the amendments to the Constitution of the United States. The said assessments and the impositions of the said tax was a deprivation of the property of the complainant and of its stockholders, and stockholders of other national banks in the State of Virginia, *without due process of law.* Neither the said act, nor any other law in the State of Virginia, made, or now makes, any provision by which any notice of the assessment is given to the persons affected thereby, nor is any provision made, or any notice provided by which such persons can learn that such assessment was to be, or had been made; nor was, or is, there any tribunal provided by the laws of the State of Virginia for the stockholders of national banks in Virginia to be heard upon the assessment of the value of their stock; nor whether they own the stock with which they are assessed, nor whether they owe any debt which should be deducted therefrom.

V. That the court erred in not declaring and decreeing that said section 17 of the act of the legislature of Virginia, approved March 6th, 1890, as aforesaid, is unconstitutional and void under section 16, article 10 of the constitution of the State of Virginia which is as follows:

"SECTION 16. Everey law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied and it shall not be sufficient to refer to any other law to fix such tax or object."

That said section 17 of the act aforesaid, taxing shares of stock in national banks does not comply with the said provision of the constitution of the State of Virginia and is therefore null and void.

VI. That the said court erred in not declaring and decreeing that

said section 17 of the act of the legislature of Virginia of
126 March 6th, 1890, imposing taxes on shares of stock in national banks was null and void because in contravention of the constitution of the State of Virginia, article 10, section I, which is as follows:

"SECTION I. Taxation except as hereinafter provided, whether imposed by the State, county or corporate bodies shall be equal and uniform and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as prescribed by law. No one species of property from which a tax may be deducted shall be taxed higher than any other species of property of equal value."

And said section 17 not only imposes a tax on the market value of the shares of stock of the complainant, which consists in part of real estate owned by it, but its real estate also is taxed at the same rate, viz: forty cents on the hundred dollars for State purposes thereby imposing a double tax, and a tax which is imposed on no other corporation or individual under the laws of the State of Virginia, except banks and the stockholders in banks.

VII. That the said court erred in not declaring and decreeing that said section 17 of the act of the legislature of Virginia of March 6th, 1890, Acts 1889–'90, page 205, and said section as amended by the act of March 3rd, 1896, Acts of the Legislature of Virginia 1895–'6, page 726–'7–'8, contravenes section 5219 of the Revised Statutes of the United States in that the taxation of the shares of stock of the stockholders of the complainant, and other national banks, was at a different and higher rate than assessed upon other moneyed capital of the character embraced by § 5219 aforesaid, in the hands of individual citizens of the State of Virginia, in that in assessing the value of the said shares of stock, the real estate belonging to the complainant and other national banks was included and embraced in the valuation of the said shares of stock and its real estate also was assessed and taxed as real estate.

VIII. That the said court erred in not declaring and decreeing that the assessment and tax imposed on the complainant and the shareholders of the complainant, and other national banks in the State of Virginia and their shareholders, under said section 17 of the act aforesaid of the legislature of Virginia of March 6th, 1890, was in contravention of § 5219 of the Revised Statutes of the United States (national banking act), in that the taxation of the shares of
127 stock of the stockholders of the complainant and other national banks was at a different and higher rate than is assessed upon other moneyed capital in the hands of the individual citizens of the State of Virginia of the character embraced by said § 5219 of the Revised Statutes of the United States aforesaid, whereas under section 8 of the General Laws of Virginia, approved March 6th, 1890, Acts 1889–'90, page 200, under the head of Schedule "C," the individual citizens of said State are allowed to deduct from their moneyed capital (of the character embraced in said § 5219 of the Revised Statutes of the United States), as set out in said section 8, all bonds, demands or claims owing to others by such person as principal debtor, but the shareholders aforesaid are not allowed said de-

ductions from the valuation for taxation of their said shares of stock.

IX. That the court erred in not decreeing a deduction from the assessed value for taxation of the stock of each of the stockholders of the complainant, who owed debts due by them respectively, which remained after offsetting all other bonds, notes and other evidences of debt, which were held by said stockholders. The said indebtedness of the said stockholders, respectively, was indebtedness which they, respectively, had nothing else to deduct it from except the shares of stock in the complainant's bank. The names of the said stockholders, R. H. T. Adams and others, and all of the particulars showing the balance of indebtedness of the said stockholders, respectively, which they were entitled to deduct from the assessed value of their stock respectively is shown by Exhibit "A" filed with the said second amended and supplemental bill of the complainant, as a part of the complainant's said second amended and supplemental bill as though set out in full on its face.

X. That the said court erred in not declaring and decreeing that said section 17 of the act aforesaid of the legislature of Virginia, approved March 6th, 1890, was null and void, because in contravention of said article 10, section 1, of the constitution of the State of Virginia, because moneyed capital in the hands of the individual citizens of the State of Virginia was allowed to be deducted under said section 8 of Schedule "C" aforesaid of the laws of Virginia, Acts 1889–'90, page 200, and shareholders of the complainant and other national banks in the State of Virginia were not allowed said deduction.

XI. That the court erred in not declaring and decreeing
128 that said section 17 of the act of the legislature of Virginia, approved March 6th, 1890, as amended by an act passed by the legislature of Virginia and approved March 3rd, 1896, Acts 1895–'6, page- 726–'7–'8, a copy of which is incorporated in the complainant's second amended and supplemental bill, is unconstitutional and void under article 14, section 1, of the amendments to the Constitution of the United States. The assessment and imposition of the taxes under the same upon the stockholders of the complainant, and other national banks in the State of Virginia, was deprivation of the property of the complainant and of its stockholders, and the stockholders of other national banks in the State of Virginia, without due process of law. Neither the said act nor any other law in the State of Virginia made, or now makes, any provision by which any notice of the assessment is given to the persons affected thereby, nor is any provision made, or any notice provided by which such person can learn that such assessment was to be, or had been, made; nor was, or is, there any tribunal provided by the laws of the State of Virginia for the stockholders of the complainant, or other national banks, to be heard upon the assessment of the value of their stock, nor whether they own the stock which is assessed, nor whether they owe any debt which should be deducted therefrom.

XII. That the said court erred in not declaring and decreeing that said section 17 of the act of the legislature of Virginia, approved

March 6th, 1890, as amended as aforesaid by an act of the legislature of Virginia, approved March 3rd, 1896, Acts 1895–'6, page-726–'7–'8, imposing taxes on shares of stock in national banks was null and void because in contravention of the constitution of the State of Virginia, article 10, section I, as aforesaid; as said section 17 as amended as aforesaid not only imposes a tax on the market value of the shares of stock of the complainant which consists in part of the real estate owned by it, but its real estate also is taxed at forty cents on the hundred dollars for State purposes, thereby imposing a double tax, and a tax which is imposed on no other corporation or individual under the laws of the State of Virginia, except banks and the stockholders in banks.

XIII. That the said court erred in not declaring and de-
129 creeing that the assessment and tax imposed on the complainant and the shareholders of the complainant, and other national banks in the State of Virginia and their shareholders, under said section 17, amended as aforesaid by an act of the legislature of Virginia, approved March 3rd, 1896, was in contravention of section 5219 of the Revised Statutes of the United States, (national banking act,) in that the assessment for taxation of the shares of stock of the stockholders of the complainant and other national banks was at a different and higher rate than is assessed upon other moneyed capital of the character embraced by said § 5219 of the U. S. Revised Statutes, in the hands of individual citizens of the State of Virginia, whereas under section 8 of the General Laws of Virginia, approved March 6th, 1890, under the head of Schedule "C," the individual citizens of the State are allowed to deduct from their moneyed capital as set out in said section 8 all bonds, demands, or claims, owing to others from such person as principal debtor. But the shareholders aforesaid are not allowed said deductions from the valuation for taxation of their shares of stock.

XIV. That the said court erred in not declaring and decreeing a deduction from the assessed value of the stock of each of the stockholders of the complainant, assessed both under section 17 as aforesaid of the act of the legislature of Virginia, approved March 6th, 1890, Acts 1889–'90, page 205–'6, and section 17 as amended as aforesaid by an act of the legislature of Virginia, approved March 3rd, 1896, Acts 1895–'6, page- 726–'7–'8, who owed debts due by them respectively which remained after offsetting all other bonds, notes and other evidences of debt, which were held by said stockholders respectively. The said indebtedness of the said stockholders, respectively, was indebtedness due by them as principal debtors, which they had nothing else to deduct it from except the shares of stock of the complainant, and the owners of other moneyed capital in the hands of individual citizens of the State of Virginia as embraced by § 5219 of the Revised Statutes of the United States, were allowed under the laws of Virginia to deduct their indebtedness in the assessments of their said moneyed capital for taxation by the State of Virginia. The names of the stockholders, R. H. T. Adams and
130 others, and all of the particulars showing the balance of the indebtedness of the said stockholders, respectively, which

they were entitled to deduct from the assessed value of their stock respectively is shown by Exhibit "A" filed with the second amended and supplemental bill of the complainant as a part of the complaint ant's said second amended and supplemental bill as though set ou- in full on its face.

XV. That the said court erred in not declaring and decreeing that said section 17 of the act aforesaid, amended as aforesaid by the act of the legislature of Virginia, approved March 3rd, 1896, was null and void because in contravention of said article 10, section I, of the constitution of the State of Virginia because other moneyed capital in the hands of individual citizens of the State of Virginia was allowed to be deducted under said section 8 of Schedule "C" aforesaid of the laws of Virginia by the act of the legislature of Virginia approved March 6th, 1890, and shareholders of the complainant and other national banks in the State of Virginia were not allowed said deduction.

XVI. That the court erred in not finding, declaring and decreeing that the indebtedness of the respective shareholders of the complainant, R. H. T. Adams and others, whose names are set out in Exhibit "A," made a part of the second amended and supplemental bill of the complainant should be deducted from the assessed value of the stock of the said stockholders of the complainant respectively. The amount of the stock, the value of the stock and the amount of indebtedness of the said shareholders, which should have been deducted, respectively, are set out in said Exhibit "A."

XVII. That the court erred in not finding, declaring and decreeing that the character of the securities and investments mentioned in section 8, Schedule "C" of the act of the legislature of Virginia, approved March 6th, 1890, are moneyed capital and as such come into competition with investments in shares of national banks in the State of Virginia, and in the city of Lynchburg, State of Virginia.

JOHN H. LEWIS,
WILSON & MANSON,
BLACKFORD, HORSLEY & BLACKFORD,
For Petitioner.

Order Allowing Appeal.

Entered February 25th, 1902.

Appeal allowed as prayed and appeal bond for costs fixed at five hundred dollars, not to operate as a supersedeas.

Richmond, Va., February 25th, 1902.

EDMUND WADDILL, JR., *U. S. Judge.*

131 *Appeal Bond.*

Filed February 25th, 1902.

Know all men by these presents, that we, The People's National Bank of Lynchburg Virginia, as principal and C. M. Blackford, as sureties, are held and firmly bound unto Morton Marye auditor of public accounts of the State of Virginia, the defendant in the full and just sum of five hundred dollars to be paid to the said defendant Morton Marye auditor of public accounts of the State of Virginia certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of February in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a circuit court of the United States for the eastern district of Virginia in a suit depending in said court, between The People's National Bank of Lynchburg Virginia plaintiff and Morton Marye, auditor of public accounts of Virginia defendant a decree was rendered against the said plaintiff The People's National Bank of Lynchburg, Virginia, and the said The People's National Bank of Lynchburg, Virginia, having obtained an appeal and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said Morton Marye auditor of public accounts of the State of Virginia citing and admonishing him to be and appear at a session of the Supreme Court of the United States, to be holden at Washington on the day in the said citation mentioned:—

Now, the condition of the above obligation is such, that if the said The People's National Bank of Lynchburg, Virginia, shall prosecute said appeal to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal of Bank.]

THE PEOPLE'S NATIONAL BANK OF LYNCHBURG,
By CHAS. M. BLACKFORD, *President.* [SEAL.]
CHAS. M. BLACKFORD. [SEAL.]

Sealed and delivered in presence of—

Witness: I. W. IVEY.
" G. E. VAUGHAN.

Approved by—

EDMUND WADDILL, JR., *U. S. Judge.*

132 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Morton Marye, auditor of public accounts of the State of Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington on the 25th day of March next, pursuant to an appeal from a decree of the circuit court of the United States for the eastern district of Virginia in your favor passed in a cause in said court wherein The People's National Bank of Lynchburg, is complainant and you are defendant to show cause, if any there be, why the decree rendered against the said complainant in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 25th day of February, in the year of our Lord one thousand nine hundred and two.

EDMUND WADDILL, JR.,
Judge United States Circuit Court,
Eastern District of Virginia.

[Endorsed:] Filed February 25th, 1902. M. F. Pleasants, clerk.

Service of the within citation acknowledged this 25th day of February, A. D. 1902.

MORTON MARYE,
Aud. Pub. Acc'ts of the State of Virginia.

133 *Order to Transmit Record.*

And, thereupon, it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said Supreme Court of the United States, and the same is transmitted accordingly.

Teste: M. F. PLEASANTS, *Clerk.*

Clerk's Certificate.

UNITED STATES OF AMERICA, *Eastern District of Virginia,* } *ss:*

I, M. F. Pleasants, clerk of the circuit court of the United States, in and for the eastern district of Virginia, do hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the cause in the caption named, as the same remain on file and of record in my said office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, at Richmond, in said district, this 10th day of March, A. D. 1902, and in the one hundred and twenty-sixth year of the Independence of the United States of America.

Seal United States Circuit Court, Eastern District of Virginia.

M. F. PLEASANTS,
Clerk U. S. Circuit Court, Eastern Dist. of Virginia.

134 In the Supreme Court of the United States.

PEOPLE'S NATIONAL BANK OF LYNCHBURG
vs.
MORTON MARYE, Auditor of Public Accounts.

Stipulation as to the Parts of the Record Not to be Printed.

Exhibits 1, 2, 3, 4, 5, with the first amended bill, and two exhibits of the same character with the second amended bill, headed "A statement showing the assessed value of each kind of personal property in the several counties and cities of the Commonwealth" for the years, respectively, 1891, 1892, 1893, 1894, 1895, 1896 and 1897.

Print the headings of these several exhibits all across the sheets down to Accomac, then omit from Accomac to Winchester, inclusive, and all figures opposite the counties and cities, except Lynchburg. Print all figures opposite Lynchburg. Print also "totals" at the bottom of each sheet and all figures opposite the word totals and the certificate of Morton Marye, auditor of public accounts, at the foot. These seven exhibits are on pages 23, 24, 25, 26, 27, 77 and 78 of the record.

In printing the exhibits referred to on the 3rd page of the second amended bill, designated as extracts from the report of the auditor of public accounts, showing every incorporated bank in the State of Virginia, etc.. for the years 1891, 1892, 1893, 1894, 1895, 1896 and 1897, inclusive, print the headings of each of these exhibits but omit from and including Albemarle to and including Wytheville Bank of Southwest Virginia at the bottom of the list of banks, except the Lynchburg banks. Print the Lynchburg banks and all figures opposite their names. Also print the figures at the foot of the list of banks. These exhibits are on pages 79 to 99 inclusive of the record. Omit in printing the statutes on the back of pages 40 to 74 inclusive.

JOHN H. LEWIS,
WILSON & MANSON,
J. D. HORSLEY,
Of Blackford, Horsley & Blackford,
Counsel for Appellant.
WILLIAM A. ANDERSON,
Attorney General of Virginia.

MORTON MARYE,
Aud. Pub. Acc'ts of Virginia.

135 [Endorsed:] File No. 18,462. Supreme Court U. S. October term 1901. Term No. 609. The People's National Bank of Lynchburg, Va., app't, *vs.* Morton Marye, auditor, &c. Stipulation as to parts of record not to be printed. Filed May 30", 1902.

Endorsed on cover: File No. 18,462. E. Virginia C. C. U. S. Term No. 280. The People's National Bank of Lynchburg, appellant, *vs.* Morton Marye, auditor of public accounts of the State of Virginia. Filed March 25, 1902.